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February 6, 2008

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2008-1 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by strikeout and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, March 7, 2008**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" ([www.boe.ca.gov/proptaxes/annocont.htm](http://www.boe.ca.gov/proptaxes/annocont.htm)). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at [www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm). Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2008-1

February 6, 2008

### 160.0000 ASSESSEE

[160.0012](#) **Leased Property.** Civil Code section 1013 provides that property affixed to land belongs to the owner of the land, unless there is an agreement permitting the property affixed to the land to be removed. This means that improvements affixed to leased land will only belong to the lessee when the terms of the lease (or other agreement between the lessor and the lessee) give the lessee the right to remove the improvements at the end of the lease. If the lease is silent and there is no other agreement between the lessor and the lessee granting the lessee the right to remove improvements affixed to leased land, the default rule applies and the improvements belong to the lessor. C 8/9/2007.

### 180.0000 ASSESSMENT APPEALS

[180.0071.015](#) **Evidence.** Evidence concerning the development plans of the purchasers of allegedly comparable properties may be relevant to the issue of the proper application of the comparative sales approach to the extent that such evidence reflects a market perspective or otherwise sheds light on the highest and best uses of those properties. Thus, such evidence may be relevant in determining whether or not the proffered properties are, in fact, comparable and whether or not the comparative sales approach may be utilized. C 8/14/2007.

### 200.0000 BASE YEAR VALUE TRANSFER—PRINCIPAL RESIDENCE

[200.0096](#) **Purchase.** A replacement property that is purchased from a person's registered domestic partner is not eligible for a transfer of base year value under Revenue and Taxation Code section 69.5. "Purchase" is defined in Revenue and Taxation Code section 67 as a change in ownership for consideration. A transfer of real property between registered domestic partners is not a change in ownership under Revenue and Taxation Code section 62(p). Thus, property acquired from a registered domestic partner is not considered "purchased" for purposes of section 69.5. C 9/10/2007.

### 220.0000 CHANGE IN OWNERSHIP

[220.0077](#) **Corporate Ownership.** Generally, when property is transferred to a newly formed corporation in return for shares of stock, the corporation issues stock certificates certifying the transferor's ownership of the agreed to number of shares soon after the property is received. However, it is common for there to be some delay between the date that a new shareholder transfers property to a new corporation and the date the corporation issues the new stockholder's stock certificates. In such cases, issues may arise as to the time when a particular person became a shareholder. Traditionally, the courts have not looked solely to the date that stock certificates were issued to determine the date that a particular person became a shareholder in a new corporation because it is not necessary for a corporation to issue stock certificates in order for the corporation to make a person a shareholder. Instead,

the courts have said that the time when a share of stock originally comes into existence, and is deemed issued, is controlled by the intent of the parties and is ascertained by examining the contract which they have executed concerning such issue. C 9/24/2007.

**220.0125 Custodianship.** Under California law, a minor may own real property or an interest therein, but a minor may not convey or make contracts relating to real property. Since a minor cannot sell or purchase property held directly in his or her own name, transactions involving a minor's interests in real property are usually conducted indirectly through a guardianship or trust. The California Uniform Transfers to Minors Act (CUTMA) provides a statutory mechanism for transferring property to an adult "custodian" for the benefit of a minor. A CUTMA custodian holds, controls, manages, and invests the custodial property. When the custodianship terminates, title to the custodial property is transferred to the minor or the minor's estate.

When property is transferred to a minor's custodian under the CUTMA, a minor has beneficial ownership of the property, and the custodian only has legal title with powers and limitations similar to that of a trustee. Therefore, for property tax purposes, an assessor should treat a CUTMA custodianship in the same manner as a trust and "look through" to identify the transferor and the present beneficiary. A CUTMA custodian is not considered the beneficial owner.

Thus, there is no exclusion from change in ownership for a transfer of real property from a grandmother to her daughter as a custodian for her grandson under the CUTMA. Such a transfer is considered a transfer from a grandmother to the grandson, and not from the grandmother to the daughter that qualifies for the parent-child exclusion. Neither is the grandparent-grandchild exclusion available since the mother of the grandchild is still living. C 9/14/2007.

**220.0794 Trusts.** Certain real property is owned by a grandparent's trust, which became irrevocable upon the grandparent's death. Under the terms of the trust, grandparent's child is the present lifetime beneficiary of the trust with the remainder to the grandchildren. It is proposed that the property be transferred to a limited liability company (LLC) of which the trust would be the sole member. Upon the death of the child, the LLC would be dissolved and the property would be transferred from the LLC to the trust and then distributed to the grandchildren. However, the proposed transfer of real property from the trust to an LLC will result in the grandchildren receiving interests in the LLC upon child's death, rather than real property. The transfer of interests in an LLC from a grandparent to a grandchild is not eligible for the grandparent-grandchild exclusion. C 10/1/2007.

## **493.0000 GRANDPARENT-GRANDCHILD TRANSFER**

**493.0020 Custodianship.** Under California law, a minor may own real property or an interest therein, but a minor may not convey or make contracts relating to real property. Since a minor cannot sell or purchase property held directly in his or her own name, transactions involving a minor's interests in real property are usually conducted indirectly through a guardianship or trust. The California Uniform Transfers to Minors Act (CUTMA) provides a statutory mechanism for transferring property to an adult "custodian" for the benefit of a minor. A CUTMA custodian holds, controls, manages, and invests the custodial property. When the custodianship terminates, title to the custodial property is transferred to the minor or the minor's estate.

When property is transferred to a minor's custodian under the CUTMA, a minor has beneficial ownership of the property, and the custodian only has legal title with powers and limitations similar to that of a trustee. Therefore, for property tax purposes, an assessor should treat a CUTMA custodianship in the same manner as a trust and "look through" to identify the transferor and the present beneficiary. A CUTMA custodian is not considered the beneficial owner.

Thus, there is no exclusion from change in ownership for a transfer of real property from a grandmother to her daughter as a custodian for her grandson under the CUTMA. Such a transfer is considered a transfer from a grandmother to the grandson, and not from the grandmother to the daughter that qualifies for the parent-child exclusion. Neither is the grandparent-grandchild exclusion available since the mother of the grandchild is still living. C 9/14/2007.

**493.0081 Limited Liability Company.** Certain real property is owned by a grandparent's trust, which became irrevocable upon the grandparent's death. Under the terms of the trust, grandparent's child is the present lifetime beneficiary of the trust with the remainder to the grandchildren. It is proposed that the property be transferred to a limited liability company (LLC) of which the trust would be the sole member. Upon the death of the child, the LLC would be dissolved and the property would be transferred from the LLC to the trust and then distributed to the grandchildren. However, the proposed transfer of real property from the trust to an LLC will result in the grandchildren receiving interests in the LLC upon child's death, rather than real property. The transfer of interests in an LLC from a grandparent to a grandchild is not eligible for the grandparent-grandchild exclusion. C 10/1/2007.

## **625.0000 PARENT-CHILD TRANSFER**

**625.0055 Custodianship.** Under California law, a minor may own real property or an interest therein, but a minor may not convey or make contracts relating to real property. Since a minor cannot sell or purchase property held directly in his or her own name, transactions involving a minor's interests in real property are usually conducted indirectly through a guardianship or trust. The California Uniform Transfers to Minors Act (CUTMA) provides a statutory mechanism for transferring property to an adult "custodian" for the benefit of a minor. A CUTMA custodian holds, controls, manages, and invests the custodial property. When the custodianship terminates, title to the custodial property is transferred to the minor or the minor's estate.

When property is transferred to a minor's custodian under the CUTMA, a minor has beneficial ownership of the property, and the custodian only has legal title with powers and limitations similar to that of a trustee. Therefore, for property tax purposes, an assessor should treat a CUTMA custodianship in the same manner as a trust and "look through" to identify the transferor and the present beneficiary. A CUTMA custodian is not considered the beneficial owner.

Thus, there is no exclusion from change in ownership for a transfer of real property from a grandmother to her daughter as a custodian for her grandson under the CUTMA. Such a transfer is considered a transfer from a grandmother to the grandson, and not from the grandmother to the daughter that qualifies for the parent-child exclusion. Neither is the grandparent-grandchild exclusion available since the mother of the grandchild is still living. C 9/14/2007.

**790.0000 SUPPLEMENTAL ASSESSMENT**

**790.0075 Exemptions.** ~~In instances in which claims for exemption must be filed, any person claiming to be eligible for an exemption to be applied against the amount of a supplemental assessment must file a claim or an amendment to a current claim, in such form as prescribed by the board, on or before the 30th day following the date of notice of the supplemental assessment, in order to receive 100 percent exemption.~~

~~In order to receive partial exemption:~~

- ~~1. With respect to property as to which the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, public schools, community colleges, state colleges, state universities, or welfare exemption was available but for which a timely application for exemption was not filed, 90 percent of any tax or penalty or interest thereon shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by section 75.52. Notwithstanding the above provision, any tax or penalty or interest thereon exceeding two hundred fifty dollars (\$250) in total amount shall be canceled or refunded, provided that it is imposed upon property entitled to relief under the above provision for which an appropriate claim for exemption has been filed.~~
- ~~2. With respect to property as to which the veterans', homeowners', or disabled veterans' exemption was available but for which a timely application for exemption was not filed, 80 percent of any tax or penalty or interest thereon shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by section 75.52.~~
- ~~3. With respect to property as to which any other exemption was available, but for which a timely application for exemption was not filed, 90 percent of any tax or penalty or interest thereon shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by section 75.52.~~
- ~~4. Where a late application for exemption has not been filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, no exemption is available. Other provisions of Division 1 of the Revenue and Taxation Code pertaining to the late filing of claims for exemption do not apply to assessments made pursuant to this chapter. LTA 2/21/86 (No. 86/19).~~

*Delete – This annotation is obsolete due to the change in the law regarding the late filing provisions for the disabled veterans' exemption (Stats. 2006, Ch. 677).*

**790.0076 Exemptions.** ~~After January 1, 1994, a failure to file a claim for exemption on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent does not result in a total loss of exemption. Rather, the claimant, if qualified, can receive cancellation or refund of 85 percent of any tax, penalty or interest billed and in no event is to pay any amount of tax or penalty or interest thereon in excess of \$250.00. LTA 12/22/93 (No. 93/78).~~

*Delete – The backup correspondence for this annotation is obsolete due to the change in the law regarding the late filing provisions for the disabled veterans' exemption (Stats. 2006, Ch. 677).*